THE HON'BLE MR JUSTICE K.C. BHANU

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WRIT PETITION NO : 6793 of 2004

22-08-2005

Between:

A. Saibaba S/o. Sri A. Pardha Saradhi,
R/o. DA/60, Near Ramalayam, "A" Zone, Ramkrishnapur,
Adilabad District.

..... PETITIONER

AND

1 The Singareni Collieries Company Limited, (A Government of India

Company), rep. by its General Manager(Personnel), Kothagudem, Khammam

District. And others.

.....RESPONDENTS

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O R D E R:

This writ petition is filed under Article 226 of the Constitution of India seeking a Mandamus declaring the action of the 4th respondent in issuing the proceedings in CRP/PER/IR/51/A/5095 dated 21-2-2002 as illegal and arbitrary.

In the affidavit filed in support of the writ petition it is stated that the petitioner is the employee of the Singareni Collieries Company, who is the 1st respondent herein and at the time of joining of the petitioner into service, the respondents-company by taking into account the 5th Form Class transfer Certificate of the petitioner has entered his date of birth as 14-05-1947 in the B Register, Service Book and he was issued with an identity card showing the above said date of birth. While so, the respondents directed the petitioner to appear before the Age Assessment Committee on 28-02-2002. However, the 4th respondent-Board determined the age of the petitioner as 56 years as on 28-02-2002. It is the case of the petitioner that as per the age assessment report recording his age as 56 years as on 28-02-2002, he would be retiring from service on 28-02-2006 and that he will be deprived of continuing upto 14-05-2007 which would be about one year and three months. In view of the same, the petitioner made a representation dated 17-11-2003 to the 2nd

respondent-General Manger but there is no response. The grievance of the petitioner is that the impugned action of the 4th respondent in altering the age of the petitioner is illegal and arbitrary.

Heard both sides.

The learned counsel for the petitioner contended that as per implementation instruction No.76 dated 25-04-1988, when there is a variation in the age in the records of the company such matter will be referred to the Age Determination Committee. When the Age Determination Committee found that there is glaring disparity between the date of birth entered in the record and age of the employee, those cases will be referred to the 4th respondent-Board. Whereas the case of the petitioner would not fall under any of the above categories. Therefore, the 4th respondent-Board contrary to the Rules erroneously came to such a conclusion that as on 28-02-2002, the petitioner is aged about 56 years.

On the other hand, the learned Standing Counsel appearing for the respondents contended that the respondent-company issued a circular inviting employees who had joined the company at less than 18 years of age to get them medical examination. Therefore, the petitioner was referred to the 4th respondent-Board and accordingly the Board determined the age of the petitioner. Therefore, the claim of the petitioner cannot be sustained.

I have perused the material available on record.

It is not in dispute that the petitioner was appointed in the year 1965 as Temporary Tonnel Mazdoor at Ravindra Gani IV. At the time of his joining, as per his 5th Form Class transfer certificate, the respondent-company entered his date of birth as 14-05-1947 and accordingly, the respondent-company entered his date of birth in the relevant records.

It is the case of the respondent-company that the petitioner shown his date of birth as 14-05-1947. In view of the fact that admittedly he joined service below 18 years of age that means he is a minor at the time of joining service, thus the age of the petitioner contravenes the statutory provisions of the Mines Act and therefore, as per the circular issued by the company, they referred the petitioner for medical examination. It is further stated that it is not only the case of the petitioner but there are employees like petitioners, who voluntarily appeared before the 4th respondent-Board. Therefore, the impugned proceedings do not suffer from any illegality.

Generally, at the time of joining service, the relevant particulars of the employee will be entered into the concerned records as per the school records of the employee only. As such, in the case of the petitioner also his date of birth of was entered as per his 5th Form class transfer certificate. As admitted in the counter filed by the respondents, the employees who voluntarily came forward for medial test do not have any documentary evidence like SSC in proof of their age at the time of entry into service of the company. As per the procedure for determination/verification of the age of the employees enclosed to the implementation Instruction No.76 Rule B it was reiterated that wherever there is no variation in records, unless there is a glaring and apparent wrong entry brought to the notice of the management, the case would not be reopened. As per Rule "C" where the Age Determination Committee/Medical Board is situated in case they do not fall under Rule "B", the Date of Birth referred in the relevant records of the company will be treated final. Therefore, it is clear that the case of the petitioner does not fall under the above category. Because there is no discrepancy with regard to the date of birth entered in the relevant records of the respondent-company. Therefore, there is no reason for Collieries to refer the petitioner to the medical Board for assessment of his age. Simply because the petitioner gave an undertaking that he will accept the age that may be assessed by the medical board does not confer any right to the Collieries to infer that the age as assessed by the medical board is accepted him. Since the Rules clearly contemplate that in case of any variance then only he has to refer to the medical board. As admitted by the respondent company the date of birth of the petitioner was entered into relevant records basing on his school record, the question of referring the petitioner to medial Board does not arise. Further the impugned order does not indicate that what is the basis for assessment of the age of the petitioner as on 28-02-2000.

For the aforesaid reasons, the order under challenge is liable to be set aside and is accordingly, set aside.

In the result, the writ petition is allowed. No costs.

22-08-2005

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